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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/657,145	09/09/2003	David Alexander	IMMR-IMD0002D (434701-005)	1899
34300 7590 06/09/2009 PATENT DEPARTMENT (51851) KILPATRICK STOCKTON LLP 1001 WEST FOURTH STREET WINSTON-SALEM, NC 27101			EXAMINER MUSSELMAN, TIMOTHY A	
			ART UNIT 3715	PAPER NUMBER
			MAIL DATE 06/09/2009	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/657,145

Applicant(s)

ALEXANDER ET AL.

Examiner

TIMOTHY MUSSELMAN

Art Unit

3715

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period **will** apply and **will** expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply **will**, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 March 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 12, 14-20, 34, 35, 37, 38 and 45 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 12, 14, 17, 18, 34, 35, 37, 38 and 45 is/are rejected.
- 7) ☒ Claim(s) 15, 16, 19 and 20 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date: _____.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____.

DETAILED ACTION

Status of Claims

In response to applicant's submission dated 3/2/2009, prosecution is reopened, and claims 12, 14-20, 34-35, 37-38, and 45 are currently pending, claim 45 having been newly added.

Claim Rejections - 35 USC § 102

The following is a quotation of the relevant portion of 35 U.S.C. 102 that forms the basis for the rejections made in this section of the office action;

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of the application for patent in the United States.

Claims 34-35, 37-38, and 45 are rejected under 35 U.S.C. 102(b) as being anticipated by Jones (US 1,642,151).

Regarding claims 34-35, 37-38, and 45, Jones discloses a device to clamp a peripheral object, the device comprising a plurality of jaws which automatically close around the peripheral object (mouse) in response to the longitudinal movement of the triggering mechanism (actuator) from a first position to a second position, the second position allowing for the closure of the jaws on the object creating frictional engagement. See page 2, col. 2, lines 49-61. Note that it is the peripheral object (mouse) that forces the triggering of the device, and also note that the triggering mechanism is an actuator as well as a lever. With regard to claim 45, note the lifting the peripheral object (the mouse) would presumably open the clamping mechanism.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the “right to exclude” granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 12 and 17-18 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 12, 26, and 30 of copending Application No. 10/657,079. Although the conflicting claims are not identical, they are not patentably distinct from each other because all of the limitations of claim 12 in the instant application can be found in claims 12 and 26 of the '079 application. Likewise, all of the limitations of claim 18 of the instant application can be found in claims 12 and 26 of the '079 application. The limitations of claim 17 of the instant application can be found in claim 30 of the copending application. This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claims 14 and 34 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 2 and 4 of copending Application No.

11/204,646. Although the conflicting claims are not identical, they are not patentably distinct from each other because all of the limitations of claim 14 in the instant application can be found in claim 2 of the '646 application, and all of the limitations of claim 34 of the instant application can be found in claim 4 of the '646 application. This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Allowable Subject Matter

Claims 15-16 are objected to as depending from a rejected base claim, but would be allowable for the reasons set forth in previous office actions if the double patenting rejection of claim 12 is overcome.

Claims 19-20 are objected to as depending from a rejected base claim, but would be allowable for the reasons set forth in previous office actions if the double patenting rejection of claim 18 is overcome.

Response to Arguments

Applicant's arguments dated 3/2/2009 have been fully considered, but are moot in view of the new grounds of rejection. However, examiner notes that if claim 34 were amended to describe the system as tubular, and also wherein the system resides within a sensing assembly, and wherein the actuator is pushed to a second position away from the grasping member, this would be sufficient to overcome all prior art of record.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to TIMOTHY MUSSELMAN whose telephone number is (571)272-1814. The examiner can normally be reached on Mon-Thu 6:00AM - 4:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Xuan Thai can be reached on (571)272-7147. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/T. M./
Examiner of Art Unit 3715

/XUAN M. THAI/
Supervisory Patent Examiner, Art Unit 3715